



Senate Judiciary Committee Approves Feinstein-Brownback Bill to Protect
Unaccompanied Alien Minors
June 3, 2004

Washington, DC – The Senate Judiciary Committee today approved bipartisan legislation sponsored by U.S. Senators Dianne Feinstein (D-Calif.) and Sam Brownback (R-KS) to reform the treatment of unaccompanied alien minors who are in federal immigration custody.

“Unaccompanied alien minors are among the most vulnerable of the immigrant population,” Senator Feinstein said. **“Many of these children have entered the country under traumatic circumstances. They are young and alone, subject to abuse and exploitation. These unaccompanied children are often unable to articulate their fears, their views, or testify to their needs as accurately as adults can. Despite this, U.S. immigration laws and policies have traditionally been developed and implemented without regard for their effect on children, particularly on unaccompanied alien children.”**

“This bill would change how these children are treated. It provides critically needed guidance to both the Department of Homeland Security and the Office of Refugee Resettlement within the Department of Health and Human Services, in the treatment and care of unaccompanied alien children encountered by immigration officials at our borders. This will ensure that unaccompanied children who come into the care of the U.S. government are treated appropriately.”

In 2002, as a result of Senator Feinstein’s efforts, Congress transferred the authority over the care and custody of unaccompanied alien children from the Immigration and Naturalization Service to the Office of Refugee Resettlement (ORR) within the Department of Health and Human Services. This transfer took effect on March 1, 2003, but, the transfer of authority to ORR, by itself, is not enough to ensure that these children are properly protected.

That is why Senators Feinstein and Brownback introduced legislation to provide clear direction on protecting these children from human traffickers and smugglers; isolating criminal juvenile offenders from other children; and ensuring that each child, including refugee minors, has access to a guardian *ad litem* and legal representation in immigration proceedings.

In the average year, approximately 5,000 unaccompanied children come into United States custody, including many who are traumatized and exploited.

Following is a summary of the bill:

- **Transfer of Custody:** Consistent with the Homeland Security Act of 2002, requires that the custody of unaccompanied alien children who are encountered by immigration authorities be transferred to the Office of Refugee Resettlement within 72 hours.
- **Standards of Detention:** Establishes minimum standards for detention and minimum conditions for placement of unaccompanied alien children and requires the ORR and DHS to implement those standards and conditions.
- **Special Rule for Criminal Juveniles and National Security Risks:** Provides that the Department of Homeland Security (and not the Office of Refugee Resettlement) will be responsible for the care and custody of children who have been charged with or convicted of a felony or who are national security risks.
- **Protection from Child Traffickers, Smugglers:** Requires the Director of ORR to take steps to protect unaccompanied alien children from traffickers, smugglers, unscrupulous lawyers, or others who would exploit them or involve them in criminal behavior.
- **Age Determination:** Provides that a child's assertion of his or her age, alone, cannot be the sole means for determining the child's age. Permits the continued use of radiographs to determine age, provided that other forms of evidence are also considered.
- **Reimbursements to States:** Permits reimbursement to state governments of expenses they incur associated with unaccompanied alien children.
- **Report on Child Trafficking:** Requires the Secretary of State to include each year in the State Department Country Report on Human Rights an assessment of the degree to which each country protects children from smugglers and traffickers.
- **Guardian Ad Litem** -- Provides the Director of the Office of Refugee Resettlement the discretion to appoint a guardian *ad litem*, when warranted, to look after the child's best interests in immigration proceedings, and requires that a pilot guardian *ad litem* program be implemented to test the efficacy of such a program.
- **Counsel** -- Requires that every unaccompanied alien child in the custody of the federal government by reason of their immigration status be afforded counsel to represent the child in immigration proceedings -- but does not provide for attorney representation at the expense of the federal government. Establishes a mechanism to encourage pro-bono counsel to represent unaccompanied alien children in immigration proceedings.
- **Special Immigrant Juvenile Visa** -- Revamps the Special Immigrant Juvenile Visa to make it a useful and flexible means of providing permanent protection for deserving unaccompanied alien children who are deemed a dependant of the State by the courts due to abuse, neglect, or abandonment.
- **Training** -- Requires the Director of ORR to offer immigration training to officials involved in dependency proceedings and social services and to Department of Homeland Security personnel who come into contact with unaccompanied alien children to ensure that they are knowledgeable about options for provision protection to such children. Also requires all immigration officers and personnel who come into contact with children to receive special training on the special needs and circumstances of children asylum seekers.

- **Waiver of inadmissibility and removal** -- Permits the Secretary of Homeland Security to waive certain grounds of inadmissibility and removal in compelling circumstances (e.g., child unlawfully entered the U.S. to flee persecution or other life threatening circumstances).
- **Asylum Claims** -- Expresses the sense of Congress commending the INS for the issuance of its Guidelines for Children's Asylum Claims and calls on the Executive Office for Immigration Review (EOIR) to adopt the Guidelines in its handling of children's asylum claims.
- **State Department** -- Requires the State Department to take steps to identify, report, and train personnel on the needs of unaccompanied refugee children.

The bill is cosponsored by Senators Jeff Bingaman (D-NM), John Breaux (D-LA), Sam Brownback (R-KS), Maria Cantwell (D-WA), Lincoln Chafee (R-RI), Hillary Clinton (D-NY), Susan Collins (R-ME), Jon Corzine (D-NJ), Mike DeWine (R-OH), Richard Durbin (D-IL), John Edwards (D-NC), Russell Feingold (D-WI), Bob Graham (D-FL) Tim Johnson (D-SD), Edward Kennedy (D-MA), John Kerry (D-MA), Herb Kohl (D-WI), Mary Landrieu (D-LA), Frank Lautenberg (D-NJ), Patrick Leahy (D-VT), Barbara Mikulski (D-MD), Patty Murray (D-WA), Paul Sarbanes (D-MD), Charles Schumer (D-NY), Arlen Specter (R-PA), George Voinovich (R-OH).

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